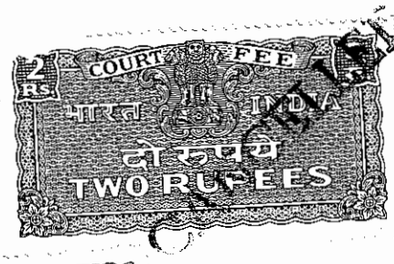

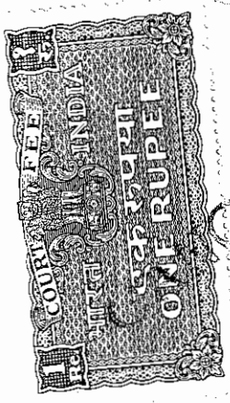

CANCELLED CANCELLED CANCELLED CANCELLED

(B) CP 152

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

M.A.NO. 1168 OF 2003.

APPELLANT : Shaitan Mal Khatri,
APPELLANT S/o. Fatte Chand Khatri,
aged 60 years, R/o. Kumhar para,
Road, Jagdalpur, Distt. Bastar
(Chhattisgarh).

V E R S U S

RESPONDENTS : 1) Milku,
RESPONDENTS S/o. Gulam Mahara, 43 years.
r/o. vill. Keshloor, Teh.
Jagdalpur, Distt. Bastar.

2) State of Chhattisgarh,
through : Collector Jagdalpur,
Distt. Bastar (Chhattisgarh).

P. R. No. 2762/03
Presented by Shri Rajesh Bhagat
dated 04/12/03

MISCELLENEOUS APPEAL UNDER ORDER 43 RULE (1) (t)
OF THE CODE OF CIVIL PROCEDURE.

R (23)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A. 1168 सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	08/11/2004: -	

Shri Prafull Bharat, counsel for the appellant.

Shri Sanjay S. Agrawal, counsel appears as amicus curiae.

Heard both the counsel.

Respondent No. 1 filed a suit for declaration, possession and also to set aside the sale deed. These reliefs were sought for pertaining to an agriculture land of more than 10 acres. The suit was resisted by the appellant but however it was decreed. Being dissatisfied, the appellant filed an appeal in the year 2000. The appeal was posted for final arguments on 17.04.2003. On that day the counsel for the appellant was absent and requests were made for adjournment but the appeal was dismissed for default.. Thereafter, an application was filed under Order 41 Rule 19 r/w Section 151 of the C.P.C for restoration of the case. In the said application reasons given for making requests are that on 17.04.2003 the counsel's wife was admitted in the hospital and therefore, the counsel was not able to attend the Court on that day. However, the lower appellate Court dismissed the said application on 27.09.2003. Thereafter, an application under Section 151 of the C.P.C. along with an affidavit was filed. Apart from the reason already adduced in the earlier application it was also brought to the notice of the Court that the son of the appellant passed away on 16.04.2003. The appellate Court in spite of all these admitted facts took a very strange view that the appellant has not put forth the sufficient reasons in the Court to restore the appeal and dismissed the application filed under Section 151 of the C.P.C.. Being aggrieved by the order dated 19.04.2003 passed by the learned appellate Court in the application filed under Order 41 Rule 19 r/w Section 151 of the C.P.C, the present appeal has been filed.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A. 1168 सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	This Court has to only state that it is very unfortunate that the lower appellate Court has taken a view what is called pedantic and hyper technical while considering the said application. Admittedly the counsel's wife was hospitalized and when this fact was brought to the notice of the Court, the Court should have only adjourned the matter on 17.04.2003. or at least allowed the application which was filed on the third day i.e. on 19.04.2003. It is also brought to the notice of the Court that on 18.04.2003 was holiday. The lower appellate Court has committed grave error in not allowing the application filed under Order 41 Rule 19 r/w 151 of the C.P.C. which resulted in not only waste of money for the parties but also waste of time for that Court as well as to this Court. The officer shall be careful in future to see that such mistakes on his part do not occur. In the result, the appeal stands allowed. Civil Appeal No.47-A of 2002 on the file of First Additional District Judge, Jagdalpur is restored to its original number and the learned Judge shall dispose of the appeal on its own merits in accordance with law within a period of four months from the date of receipt of the copy of this order. Mr. Sanjay S. Agrawal, Advocate is appointed as amicus curiae to assist this Court. Parties are entitled for certified copy of this order. Sd/- Chief Justice	

Khan

[पीछे देखिये